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09/685,398	10/10/2000	James Richard Kraemer	RSW9-2000-0107-US1	7911
<div>7590 05/29/2008 Esther H. Chong, Esquire Synnestvedt &amp; Lechner LLP 2600 Aramark Tower 1101 Market Street Philadelphia, PA 19107-2950</div>			<div>EXAMINER HAMILTON, LALITA M</div>	
			<div>ART UNIT 3691</div>	<div>PAPER NUMBER</div>
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/685,398  
Filing Date: October 10, 2000  
Appellant(s): KRAEMER, JAMES RICHARD

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Gregory S. Bernabeo  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed March 12, 2008 appealing from the Office action mailed September 19, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

7,149,713	Bove	12-2006
7,016,870	Jones	3-2006

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bove (7,149,713) in view of Jones (7,016,870).

Bove discloses a method and corresponding system for automatically rebalancing a portfolio comprising a list comprising at least one recommended rebalancing transactions, each recommended rebalancing transaction comprising asset information identifying a specific asset, quantity information identifying a specific number of units of the specific asset, and transaction information comprising one of a buy instruction and a sell instruction, and automatically implementing the list comprising at least one of recommended rebalancing transactions based on the received customer's response to cause execution of each recommended rebalancing transaction

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(col.1, line 55 to col.2, line 40; col.3, line 15 to col.5, line 10; and col.11, line 65 to col.13, line 5); the list comprising at least one of recommended rebalancing transactions to the customer via a second customer-defined communications method if the step of transmitting via the first communications method was not successfully executed (col.1, line 55 to col.2, line 40; col.3, line 15 to col.5, line 10; and col.11, line 65 to col.13, line 5); the customer's response constitutes performing a single action by the customer (col.1, line 55 to col.2, line 40; col.3, line 15 to col.5, line 10; and col.11, line 65 to col.13, line 5); the single action comprises one of the following: pressing a button, touching a portion of a screen, or speaking a sound (col.1, line 55 to col.2, line 40; col.3, line 15 to col.5, line 10; and col.11, line 65 to col.13, line 5); verifying the identify of the customer prior to the implementing step (col.1, line 55 to col.2, line 40; col.3, line 15 to col.5, line 10; and col.11, line 65 to col.13, line 5); the verifying step is performed automatically by a computer system (col.1, line 55 to col.2, line 40; col.3, line 15 to col.5, line 10; and col.11, line 65 to col.13, line 5); and generating execution instructions based on the list comprising at least one of recommended rebalancing transactions; and transmitting the execution instructions to an electronic trading system, whereby each respective transaction of the list comprising at least one of recommended rebalancing transactions is executed electronically (col.1, line 55 to col.2, line 40; col.3, line 15 to col.5, line 10; and col.11, line 65 to col.13, line 5). Bove does not disclose transmitting an alert message via the customer's chosen communication method. Jones teaches a method and corresponding system for portfolio rebalancing comprising transmitting an alter message via the customer's chosen communication method concerning

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rebalancing of the portfolio (col.27, lines 25-30, 50-55 and col.28, lines 30-38). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate transmitting alerts to the customer via their chosen communication method, as taught by Jones into the invention disclosed by Bove, for the motivation of alerting the customer that the chosen automatic rebalancing method is about to be executed.

#### **(10) Response to Argument**

The Appellant argues that Jones does not disclose an alert message...and a list comprising at least one recommended rebalancing transaction or asset information identifying a specific asset, quantity information identifying a specific number of units of the specific asset, and transaction information comprising one of a buy instruction or a sell instruction.

In response, Bove discloses the following:

A computer-implemented method of rebalancing a portfolio of assets to achieve optimality, the method comprising:

- a list comprising at least one recommended rebalancing transaction, each recommended rebalancing transaction comprising asset information identifying a specific asset, quantity information identifying a specific number of units of the specific asset, and transaction information comprising one of a buy instruction and a sell instruction **(The customer receives a list for selling amounts of assets and specific**

**recommendations for buying amounts of one or more investment funds--col.1, line 55 to col.2, line 40);**

- receiving from the customer a single response **(The customer specifies whether to implement the trade—col.1, line 55 to col.2, line 40);** and
- automatically implementing the list comprising at least one recommended rebalancing transaction based on the received customer's response to cause execution of each recommended rebalancing transaction **(Customer chooses whether to have the recommendation implemented. The trade cannot take place without customer approval—col.1, line 55 to col.2, line 45).**

Bove does not disclose:

- transmitting to a customer an alert message for alerting an imbalance status of a customer's portfolio

Jones teaches:

- transmitting to a customer an alert message for alerting an imbalance status of a customer's portfolio **(Jones teaches a plan monitoring model that transmits alerts—col.27, lines 50-55—Based on the user's preferences, the system may offer advice on which decision variable should be modified to bring the portfolio back on track--col.28, lines 30-38).**

The Appellant argues that neither reference discloses or teaches transmitting the alert via the customer-defined communications method; automatically transmitting the alert message...to the customer via a second customer-defined communications method; automatically retransmitting an alert message to the customer via a secondary method if the step of transmitting via the first communications method was not successfully executed; the customer's response constitutes performing a single action by the customer; automatic implementation is contained in a return e-mail from the customer; the customer's response is received on paper and includes an optical code for retrieving the list of recommended rebalancing transactions; customer's response is received as a voice sound, wherein the voice sound is recognized using a voice recognition device; or a second unit for transmitting the alert message and the list of a plurality of recommended rebalancing transactions to the customer.

In response, Jones teaches sending such recommended rebalancing transaction information to a customer in an alert message, so that the customer may accept and initiate rebalancing with a single **response (Jones teaches that based upon user's preferences, the system may offer advice on which decision variable should be modified to bring the portfolio back on track (col.28, lines 30-38))**; transmitting of the alert message is performed via a first customer-defined communications method **(Jones teaches that the alert may be displayed using telephone, fax, email, pager, fax, or similar messaging system)**; automatically retransmitting an alert message to the customer via a secondary method if a first communication is not successfully

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executed **(Jones teaches that the alert may be displayed during a subsequent user session—col.28, lines 30-38)**; transmission of an alert message and execution of transactions listed in an alert message based on the customer's response to the alert message **(Jones teaches that the alert may be displayed using telephone, fax, email, pager, fax, or similar messaging system)**; and the customer's response that results in automatic implementation of the list of rebalancing transactions is contained in a return e-mail, response received on paper including an optical code for retrieving the list, voice sound, or financial kiosk **(Jones teaches that the alert may be displayed using telephone, fax, email, pager, fax, or similar messaging system)**. Bove discloses transmitting a list of a plurality of recommended rebalancing transactions **(The customer receives a list for selling amounts of assets and specific recommendations for buying amounts of one or more investment funds--col.1, line 55 to col.2, line 40)**.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Lalita M. Hamilton/, Primary Examiner

Conferees:

Vincent Millin /VM/

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Supervisory Patent Examiner, Art Unit 3691